

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the following remarks:

INFORMATION DISCLOSURE STATEMENT

A Sixth Information Disclosure Statement and associated papers were filed herein on December 19, 2008. It is requested that the Examiner consider the documents cited therein and return a fully-initialed copy of applicants' Form PTO-1449 with the next official communication.

STATUS OF CLAIMS

Claims 2-16, 18-22, 26-27, 30-43 and 56 remain in this application. Claims 23-25 and 28-29 have been cancelled by the foregoing amendment, without prejudice or disclaimer.

Of the claims remaining in this application, Claims 2-16, 18-20, 26-27, 30-43 and 56 are under examination, while Claims 21 and 22 are withdrawn from consideration as drawn to non-elected species. In light of the remarks and data submitted below, applicants believe that the elected species (Ag) is patentable, so that the claims to the non-elected species should be rejoined and examined; further, applicants believe that in light of the remarks and data submitted below, that the non-elected species (TiO₂) is also patentable.

DISCUSSION OF CLAIM AMENDMENTS

Claim 18, which is the only independent claim in this application, has been rewritten consistent with the as-filed specification, for example, paragraph **[0038]** therein. Claim 18 now specifically encompasses the subject matter of Claim 21 therein, but wherein the metallic compound is TiO₂, while the language of Claim 18 now specifies that the at least one metal previously recited therein is selected from the group consisting of Ag and alloys thereof.

To prevent confusion, Claim 18 now specifies that the reflective particles are different from the goniochromatic coloring agent, which is supported for example by

paragraph [0038] of the as-filed specification. Claim 18 thus now specifies that the reflective particles suited for creating highlight points that are visible to the naked eye are different from the goniochromatic coloring agent and comprise particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal, or particles of a synthetic substrate at least partially coated with a layer of at least one metallic compound, said at least one metal being selected from the group consisting of Ag and alloys thereof, said at least one metallic compound being TiO₂.

Consistent with the amendment to Claim 18, Claims 19 and 21 have been amended and Claims 23-25 and 28-29 have been cancelled, without prejudice or disclaimer.

It is clear from the foregoing that no new matter has been introduced by these amendments.

SUMMARY OF THE CLAIMED INVENTION

The claims are now directed to a goniochromatic/light reflecting lip makeup composition comprising (a) at least one goniochromatic coloring agent suited for creating a goniochromatic colored background and (b) an amount of light reflective particles suited for creating highlight points that are visible to the naked eye, wherein said reflective particles are different from the goniochromatic coloring agent and comprise particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal, or comprise particles of a synthetic substrate at least partially coated with a layer of at least one metallic compound, said at least one metal being selected from the group consisting of Ag and alloys thereof, said at least one metallic compound being TiO₂, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

This composition provides a volumizing effect to the lips.

As indicated in the specification (paragraphs [0010], [0012], the goniochromatic coloring agent makes it possible to observe a color change and the reflective particles can cloud the visual perception of the curvature of the lip make-up support as clearly illustrated by the examples of the present invention. See in particular, paragraphs [00161] to [00167] of the specification. The reflective

particles create highlight points that are visible to the naked eye and the composition imparts an improved volumizing effect to the lips.

CLAIM OBJECTIONS

Claim 18 has been objected to for using improper Markush language. Claim 18 has been amended and is believed to now use correct Markush language. Withdrawal of the objection is therefore believed to be in order.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 2-16, 18-20, 26-27, 30-43 and 56, all of the claims examined thus far, have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Grimm et al. (US 2002/0064509) in view of Christie et al. (US 6,325,847). Applicants submit that all of the claims as amended hereinabove are free of the record rejection.

The Grimm et al. published application describes cosmetic compositions comprising a goniochromatic coloring agent, but which are totally deprived of reflective particles, in contrast to the present invention. Grimm et al. report that their goniochromatic coloring agent may be, for example, optionally combined with nacres (paragraph **[0033]**).

The reflective particles suitable for the present invention are structurally defined in terms of core and/or layer, and functionally defined as being suitable for creating highlight points that are visible to the naked eye and that do not interfere with the goniochromatic effect of the coloring goniochromatic agent (paragraphs **[0011]**, **[0020]**, **[0021]**, **[0037]**). Moreover, as indicated in the present application as filed (see paragraphs **[0056]** and **[0057]** of the present application as filed), nacres such as FLAMENCO® are not suitable as reflective particles according to the present invention. This clearly shows that any sorts of coloring agents are not automatically suitable in order to create highlight points that are visible to the naked eye and thus to achieve the present invention.

Clearly, nothing in Grimm et al. discloses nor suggests the use of specific reflective particles according to the invention, even less in combination with a goniochromatic coloring agent in a cosmetic composition, in order to create highlight

points that are visible to the naked eye as well as to impart an improved volumizing effect to the lips, once applied.

Grimm et al. only indicate that in addition to goniochromatic agents, further conventional pigments may be used (See [0027]), such as lakes, pearlescent pigments and inorganic pigments (see [0027] and [0029]).

Moreover, nothing in the newly cited Christie et al. discloses nor suggests that CEM could be used in order to create on the lips highlight points that are visible to the naked eye when associating with a goniochromatic agent, then creating a volumizing effect.

Christie et al.'s precious metal color effect material is composed of a plurality of encapsulated substrate platelets in which each platelet is encapsulated with a first layer of precious metal (among which are silver and alloys), which acts as a reflector to light directed thereon, a second layer encapsulating the first layer where the second layer provides an optically variable reflection of light impinging thereon and a third layer encapsulating the second layer and being selectively transparent to light directed thereon. In addition to being reflective, there are color effects and color travel properties. Products made with the platelets show a very clean color "flop", for example, from blue to violet or green to violet, depending upon a change in viewing angle of a lacquer film containing the product. Christie et al. do not remotely suggest adding their color effect material/pigment to a goniochromatic pigment such as Grimm et al.'s. there is not a scintilla of a suggestion in Christie et al. to combine its pigment with Grimm et al.'s goniochromatic coloring agent, much less in a lip makeup. Given the very special color changing properties of both the goniochromatic coloring agents used by Grimm et al. and the CEM of Christie et al., one of ordinary skill would not have a reasonable expectation of success in combining the two in a lip color. Adding the two agents together changes the optics of the system and it is optics upon which each separate system relies for its characteristic effects. It would not be possible to predict what might happen, so that it would not have been possible for one of ordinary skill to have a reasonable expectation of success in combining them. the properties of one of these agents could easily cancel out the effects of the other and fail to provide the instant highlighting effect as well as the instant volumizing effect.

Consequently, Christie et al. do not compensate for Grimm et al.'s fatal deficiency, and the combination was not *prima facie* obvious to one of ordinary skill.

Moreover, in order to demonstrate that it was not obvious for a person skilled in the art to select the specific reflective particles according to the present invention, able to create a volumizing and highlighting effect when associated with a goniochromatic coloring agent, comparative data is provided by applicants in the accompanying ANNEX.

More particularly, these data compare the volumizing effect of compositions comprising reflective particles according to the present invention (i.e., "glass + TiO₂", "synthetic mica + TiO₂" or "glass + Ag"), combined with a goniochromatic agent according to the invention, together with a composition comprising another type of particles (i.e., "glass + iron oxide") combined with the same goniochromatic agent.

The difference of the volumizing effect obtained for each composition can easily be observed on the different pictures (inserted in the ANNEX and the attached enlargements of these pictures). Lips made up with a lip makeup composition in accord with the present invention show not only a highlighting effect but also a much greater volumizing effect than lips made up with a lip makeup containing the same goniochromatic coloring agent but without the light reflective particles.

In view of this, the subject matter of the present invention clearly would not have been obvious from the cited combination of references.

To conclude, the references cited by the Examiner separately or in combination, fail to provide a teaching that would motivate one of ordinary skill to combine them with an expectation of success or to arrive at a composition of the present invention. Indeed, neither of these documents offers the advantages in terms of volumizing effect and highlighting points such a combination according to the invention provides, which are shown in the attached ANNEX.

CONCLUSION

In view of the foregoing, further, favorable action in the form of a Notice of Allowance is believed to be next in order and is earnestly solicited.

A 37 C.F.R. § 1.132 Declaration presenting the results set forth in the ANNEX is under preparation and will follow as soon as available.

Respectfully submitted,

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Attachment: ANNEX TO REPLY AND AMENDMENT,
8 pages, together with 5 photographs